Headquarters U.S. Air Force

Integrity - Service - Excellence

Update on Other Issues

John Hoertz, Air Force REO
Atlanta, GA
4 Mar 04

U.S. AIR FORCE

U.S. AIR FORCE

OVERVIEW

- Military MACT Surface Coating NESHAP
- Delegation of Signature Authority
- Surge Provisions
- Fines and Penalties
- EPA's High Priority Violations

U.S. AIR FORCE

Military MACT Surface Coating NESHAP

- **NESHAP being developed, in coordination with DoD, to cover military surface coating operations**
- **Currently in the data collection/data analysis phase**
- **The rule would supplant other NESHAPs**
  - **Auto & Light Duty Truck, MMPP, Large Appliance, others**
    - **These rules should not affect DoD installations**
    - **Most of these rules exempt surface coating at DoD installations**
- **At this point, only applies to major sources, but area sources likely to be covered**

U.S. AIR FORCE

Military MACT Surface Coating NESHAP

- **DoD hopes the NESHAP will:**
  - **Cover all military surface coating processes other than Aerospace and Shipbuilding NESHAPs**
  - **Provide in-the-can limits instead of facility wide average limits**
  - **Exempt surface coating of munitions**
  - **Allow facilities to comply with an alternative equivalent NESHAP in some instances**
  - **Include a low-usage exemption for coatings used in certain activities (e.g., # of gals used)**

Military MACT Surface Coating NESHAP

- Area sources
  - Advantages of being covered:
    - Only subject to one rule, as opposed to many
    - Avoid being subject to different limits, recordkeeping, etc.
  - Disadvantages:
    - Could be subject to MACT
- Maintenance activities – DoD seeking data to support exemption
- Timeline: Proposed 2005,Promulgated 2006, Compliance 2009

Military MACT Surface Coating NESHAP

- What is DoD doing to limit the impact of the MACT?
  - EPA is going to regulate painting of facilities, i.e., facility maintenance type activities
    - EPA is currently focused on production type facilities
  - EPA to regulate DoD's maintenance type facility painting as well, unless data provided showing low enough HAP emission generation

Military MACT Surface Coating NESHAP

- EPA's perspective on the issue:
  - Facility maintenance painting results in emission of tons and tons of HAPs
    - Chemical Process Facilities
    - Aerospace Facilities
  - Thus, EPA has targeted facility maintenance painting for regulation

Military MACT Surface Coating NESHAP

- **How DoD can avoid Facility Maintenance Painting regulations:**
  - **Provide EPA with data to support exclusion**
    - **Convince EPA that DoD facility maintenance painting is a small source of HAP emissions**
    - **Show data for each type of activity**
  - **Kinds of facilities:**
    - **Barracks, paint booths (i.e., painting of the booths themselves), buildings, equipment, forklifts, trucks, road striping, offices, roofing, storage tanks, etc.**

Military MACT Surface Coating NESHAP

- **Data DoD thinks it can get access to:**
  - **Contracting data**
    - **How often we paint our facilities**
    - **Estimates of number of gallons of paint required, as stated in individual contracts**
    - **Kinds of paint used**
  - **DoD needs the data ASAP**
  - **Work with Command level folks to assemble the data**

U.S. AIR FORCE

Delegation of Signature Authority

- Big issue for most Title V bases
- Problem is that "Responsible Official" definition requires such person to be someone who has authority to make/set policy on behalf of base (40 CFR 70.6(a)(3)(iii)(A) and 40 CFR 63.2)
- This means base commander or someone who has authority to act on behalf of commander in his absence
- Relaxation would require regulatory revision

U.S. AIR FORCE

Delegation of Signature Authority

- Federal regs (CFRs) do allow states to negotiate dates by which reports must be submitted
- If sources subject to more than one standard, states have latitude to establish workable submittal schedules for required reports
- States are also amenable to allowing more than one person to sign off on reports, so long as each such person qualifies as a Responsible Official

U.S. AIR FORCE

Delegation of Signature Authority

- **Some bases have been able to get approval from permitting authorities to delegate signature authority to lower base levels**
- **However, this constitutes a relaxation of the federal regs (per CFRs). States really don't have that latitude**
- **What is needed:**
  - **Reg relief that allows for lower levels to sign off on "low-level" reports, such as fuel oil reports, generator reports**
  - **Commander would still be responsible for signing off on permits and annual compliance certifications**

U.S. AIR FORCE

Delegation of Signature Authority

- CAASSC could be used as vehicle for gaining some type of relief from EPA on this issue
- EPA has shown in the past that it recognizes the unique attributes of military bases
  - 2 Aug 96 Major Source Guidance

U.S. AIR FORCE

Surge Provisions

- **Became a real issue in wake of WTC attack**
- **Surge Condition:**
  - ***temporary response to a national security emergency that would require an installation to increase emissions above and beyond normal operating levels and which cannot be accommodated within the terms of applicable permit limitations.***
- **EPA has a problem with bases being allowed to operate at levels that exceed permit conditions**

U.S. AIR FORCE

Surge Provisions

- Several bases were able to get surge provisions included in their TV permit, but EPA does not approve of them and has fought them
- DASN(E) (Don Schregardus) is working with HQ EPA on the issue, with the support of the CAASSC
- The services and the CAASSC have been working to gather data to support our position

U.S. AIR FORCE

Surge Provisions

- Six approaches being considered:
  - Change definition of “emergency” in 40 CFR 70.6(g) (Title V regs) to include national security emergencies
  - Request EPA make regulatory change based on CAA §502 exemption authority
  - DoD RECs pursue state/local reg changes supporting EPA approval of SIPs containing surge provisions

U.S. AIR FORCE

Surge Provisions

- Six approaches being considered:
  - Seek admin/regulatory alternatives to streamline process for obtaining a Presidential national security exemption
  - Executive Order delegating Presidential exemption
  - Surge provision based on de minimis concept

U.S. AIR FORCE

Fines and Penalties

- **EPA fines: We pay**
  - **Be aware of economic benefit aspect of EPA fines**
    - **Ft Wainwright, $16 million**
- **State fines:**
  - **PAY after consultation in 9th Circuit**
    - **Consultation with DOJ and base JA**
    - **State courts will decide if we are subject to state and local CAA fines**
    - **Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington**

U.S. AIR FORCE

Fines and Penalties

- **PAY in 6th Circuit**
  - **Ohio, Kentucky, Tennessee and Michigan**
- **DO NOT PAY in 11th Circuit**
  - **Alabama, Florida and Georgia**
- **CONSULT first in all other Circuits**
  - **Talk to DOJ**
  - **Decide on a case-by-case basis**

U.S. AIR FORCE

EPA's High Priority Violations

- Dec 98, EPA establishes system for tracking "high priority violators" of CAA
- Implemented beginning 3Q99
- Designed to help EPA and states prioritize enforcement efforts
- Applies to Air, Water, Haz Waste media
- Applies to major sources

U.S. AIR FORCE

EPA's High Priority Violations

- General HPV criteria:
  - Failure to obtain PSD/NSR permit
  - Violation of air toxics emissions or operating parameter requirement
  - Violation that affects synthetic minor status
  - Violation of substantive term of a local, state, or federal enforcement order/decree
  - Substantial Title V certification violation

U.S. AIR FORCE

EPA's High Priority Violations

- General HPV criteria:
  - Substantial Title V permit application violation
  - Substantial testing, monitoring, recordkeeping, reporting violation
  - Violation of allowable emission limit
  - Violation by chronic or recalcitrant violator
  - Substantial violation of section 112(r)

U.S. AIR FORCE

EPA's High Priority Violations

- Dec 98, EPA establishes system for tracking "high priority violators" of CAA
- Implemented beginning 3Q99
- Designed to help EPA and states prioritize enforcement efforts
- Applies to Air, Water, Haz Waste media
- Applies to major sources

U.S. AIR FORCE

EPA's High Priority Violations

- **Bad PR if you get on list, because EPA's HPV database can be accessed by general public (http://www.epa.gov/idea/fedfac/)**
- **Even if "fix" HPV violations, your history as an HPV violator stays in system for 8 quarters**

U.S. AIR FORCE

EPA's High Priority Violations

- **An Air Force base was recently added to HPV database following violations discovered during multimedia inspection**
- **Base had only ONE air NOV in its history and that was in 1991**
- **Primary findings:**
  - **Boiler oxygen sensor operating out of optimal range**
  - **Emission report shows inaccurate SOx emissions**

U.S. AIR FORCE

EPA's High Priority Violations

- EPA Region 1 – 1 AF, 1 MC
- EPA Region 2 – 1 Navy
- EPA Region 3 – 1 Army
- EPA Region 4 – 2 Army, 1 Navy
- EPA Region 5 – None
- EPA Region 6 – 1 AF
- EPA Region 7 – None
- EPA Region 8 – 1 Army
- EPA Region 9 – None
- EPA Region 10 – 2 Army, 1 AF, 1 Navy